would not have been possible, had the trial judge not separated the extract which he read to the jury from the context. The conception which the Supreme Court meant to enunciate was, that, if the plaintiff should be able to make out a *prima facie* case for the jury, the burden of going forward with the evidence, with a view to destroying the plaintiff's case, would rest upon the defendant. This is clearly sound law.

It was said in the note which has been referred to, that at the next trial the defendant would probably advance the theory that his act was instinctive, and ask for an instruction to the jury that, if his action was involuntary, and such as would instinctively result from a sudden and irresistible impulse to escape a terrible danger, he was not liable to the plaintiff for the consequences of it. It was submitted further, that it was difficult to see how such an instruction could be refused. On the second trial the defendant's counsel requested the court to charge that, "If the jury find from the evidence that the defendant did take the plaintiff and use him as a shield, but that this action was involuntary, or such as would instinctively result from a sudden and irresistible impulse in the presence of a terrible danger, he is not liable to the plaintiff for the consequences of it." The court declined to give the instruction precisely in the words requested, but charged instead, that the essence of the liability must be a voluntary act. The Supreme Court (Van Brunt, P. J.) now declare that this was error, and that the defendant was entitled to have the instruction which he asked for submitted to the jury. "The essence of the liability," the court says, "is not whether the act of Sage was voluntary or not. An instinctive act may be voluntary; an act done upon the spur of the moment, in anticipation of impending evil, may be voluntary. But such acts are not the result of an intent based upon reasoning." If the act of the defendant was of this character, the court appears to believe that he ought not to be held liable for the consequences of it.

COLLATERAL INHERITANCE TAX. — The case of *Minot* v. *Winthrop*, decided October 17, 1894, by the Supreme Court of Massachusetts, involves some points of more than local importance. It raises the question whether the St. 1891, c. 425, imposing a collateral inheritance tax, is constitutional. One of the objections urged against this statute was that the right of succession was a necessary incident of property, protected by the Constitution of Massachusetts and that consequently the State could not tax it. As was to be expected, the court declined to take this view and upheld the statute. (There is a dissenting opinion, but on another point.) The court holds that the State has full power to regulate the devolution of property on the death of the owner, subject only to the limitations that such regulation be reasonable, and that no property be taken, either by taxation or directly, except for the public service. To conclude from this, as the court does, that the State could not take away altogether the inheritable quality of property is to go further than is necessary in this case. Undoubtedly the private inheritance of property is, in some measure, a social necessity in our age, and an abolition of it would at present be neither reasonable nor a taking of property for the public service. But the Constitution is a growth, and it is conceivable, though not likely, that a time might come when such a measure might be very differently viewed, even under the present Constitution.

Aside from these limitations, however, whose severity may vary with

the structure of society and the conditions of life in general, it seems perfectly clear that the State has complete authority to regulate the transmission of property after the owner's death. The only grain of truth in the proposition that inheritance is a "necessary incident" of property or, as is sometime said, "a common law incident," seems to be this. It is necessary to the idea of private property that there be a succession of some kind on the death of the owner. Who shall succeed is quite a different question, and has been answered differently at different times and places. Private succession we have had for centuries, but it is no more a consequence of the conception of property than is transferability *inter vivos*.

It is hardly necessary to say that property is here used in the sense of general property, applying therefore only to the fee of land and the general *dominium* of chattels. It is no argument in favor of the proposition we have been supporting to cite the case of the occupant of an estate *pur autre vie*, 8 H. L. R. 167 (Nov., 1894).

The case of *Minot* v. *Winthrop* is further interesting from the fact that it introduces into Massachusetts a new commodity. In order to uphold the statute it is necessary to bring the right of succession under the head of "commodities" in the Constitution. This the Supreme Court does, though not without flinching. It has been held that a corporate franchise is a commodity. It is difficult to see, then, why the exercise of any private right is not one also. Having once departed from the economic conception of commodity, the court has only to be consistent with itself. In *Gleason* v. *McKay*, 134 Mass. 419, it was held that a partnership with shares transferable without the special assent of the members was not a commodity. It is difficult to distinguish that case from this, and Lathrop J., in his dissenting opinion, finds it impossible to do so. The majority of the court, however, think that *Gleason* v. *McKay* really decided nothing more than that it was unconstitutional to impose a tax on that particular kind of partnership alone, such a restriction being unreasonable. If the case decided no more than that, the court at the time certainly thought it was going further. Nothing is said about the reasonableness of the tax in the report of *Gleason* v. *McKay*. A similar interesting case in another State is *State of Maine* v. *Hamlin*, 30 Atl. R. 76.

STRIKE INJUNCTIONS. — The reports recently printed of the cases ensuing upon the injunctions issued against the strike leaders of last July afford an opportunity of considering the legal side of the trouble, — a side not frequently discussed. There are, first, a few cases which have endeavored to compel specific performance of their contracts on the part of the striking employees, *S. California R. R.* v. *Rutherford*, 62 Fed. Rep. 796, compelling the hauling of Pullman cars as long as the employees worked for the company at all, and a case of last December which enjoined employees from quitting work on a road in the hands of the court's receiver, *Farmer's L. & T. Co.* v. *N. P. R. R. Co.*, 60 Fed. Rep. 803; but the latter case has been overruled in the Circuit Court (Chicago Law Journal, Vol. V. N. S. p. 461). It must be allowed as settled that these cases are wrong, and there has been little or no attempt to infringe upon the rule that no specific performance can be compelled in a contract for personal service, however great the value of the service may be. This is admitted in all the other cases which have been decided, and though it is